

The Co-operative Formation Process

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This is a brief introduction to the formation process for co-operatives. It is designed to assist you to understand the steps involved in establishing a co-operative.

The formation process should be preceded by a [formation decision](#) – the decision that you really want to form a co-operative.

These notes are not comprehensive and do not provide the totality of information and advice needed to make the business, legal, financial and management decisions in forming a co-operative.

There are two critically important publications that you need to acquire for yourself:

- Co-operatives Act 1996 and
- Co-operatives Regulations 1997.

These are available from Information Victoria, 356 Collins Street, Melbourne. The Co-operative Federation of Victoria Ltd has also developed a series of Legislation Information Sheets on provisions in the Co-operatives Act.

Formation Steps

There are ten basic steps in the formation of a co-operative:

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Formation Meeting

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Co-operative Idea

The first step involves deciding whether the co-operative option is viable by collecting information, clarifying the need for a co-operative and pulling together a core group committed to the co-operative ideal.

The key decision, however, for the core group is whether or not there is an agreed mutual need and whether or not a co-op is the best way to address it. Other legal and organisational options include an unincorporated business, an incorporated company, an incorporated association and a partnership.

A co-operative must be formed and registered in accordance with the provisions of the Co-operatives Act. The Co-operatives Act provides that upon incorporation, a co-operative has the characteristics of a body corporate, including perpetual succession, a common seal, the capacity to purchase, lease, hold, sell and dispose of real and personal property and to do all things that bodies corporate may do. The cost of incorporation under the Co-operatives Act is lower than incorporation under the Corporations Laws. The obligations of an office holder of a co-operative are less extensive than the obligations of an office holder of a corporation.

Getting started also means understanding the legislative framework for co-operatives. In Victoria it is the Co-operatives Act 1996 and Co-operatives Regulations

A Public Meeting

The second step is organising a public meeting to establish whether there is public support for the co-operative. At the meeting the core group will present its preliminary findings - what is the perceived common need, why a co-operative will meet that need and the benefits and limits of co-operatives.

The key is not whether there is sufficient interest but whether there are sufficient individuals and organisations who will join and support the co-operative as active members – beyond the membership of the initial group.

Clarity is also necessary as to what kind of co-operative is being formed because this will critically influence who are its members, the eligibility for membership and how the co-operative functions. This should, of course, be obvious - the formation of any co-operative is based on the mutual need of its members. If there is debate about what is the mutual need, then, there may not be a basis for a co-operative.

There are many different types of co-operatives:

- Consumer co-operatives - purchasing groups
- Service co-operatives - housing, child care, funeral, insurance, travel, dairy, furniture, film, handicrafts
- Financial co-operatives - credit unions
- Marketing co-operatives - wheat, wool, livestock and poultry

- Worker co-operatives

It is also necessary to establish whether the co-operative will be registered as a trading or non-trading co-operative. A trading co-operative allows its members to receive a share of any surplus funds or a return on the capital they have invested if the co-operative is wound up. Members of a non-trading co-operative do not receive a distribution of surplus and if the co-operative is wound up only get back the original value of their shares.

A trading co-operative must have a share capital.

A member of a co-operative with share capital is liable to the co-operative for the amount, if any, unpaid on the shares held by the member, together with any charges payable by the member to the co-operative. Otherwise, a member of a co-operative is not under any personal liability to the co-operative.

At the public meeting there needs to be plenty of time for discussion so that everyone who wants to can express their views and ask questions.

The basis for any co-operative is its members. Members can be individuals or corporations.

Steering Committee

After reports and the subsequent discussion, a decision has to be made on whether or not to proceed. A resolution would, then, be put to the meeting for a decision. If it is agreed to proceed, then, a steering committee should be appointed to develop the proposed co-operative. The meeting will have to decide on the size of the steering committee, its terms of reference and when it is to report to another public meeting. This should also be put to the meeting as a resolution. Once passed, the Chair could call for nominations to the Steering Committee. If there are more nominations than the number allowed for in the resolution, then, there will have to be an election.

The Steering Committee has four basic tasks:

- Member Survey
- Market Survey
- Rules
- Business Plan

These tasks are critically interdependent. In undertaking these tasks, the Steering Committee must be able to identify the critical questions that need to be addressed in a feasibility study.

It is also important that all members of the Steering Committee contribute to its deliberations. While individual members will make different contributions because of differences in resources, skills and availability, decisions are made by the group – not by individuals within the group.

Member and Market Surveys

The two most important tasks of the Steering Committee are to Survey Potential Members and the Market in which the co-operative proposes to operate.

A co-operative is formed to serve its members by providing services that are used by the members. It is critical to establish, therefore, who will join the co-operative and actively use its services.

It will be tempting to accept as members individuals who buy shares, and indeed, may be in a position to purchase extra shares but whose contribution ends with their shareholding and they are unlikely to be active users of the co-operative.

Rules

The Rules of the co-operative describe how the co-operative will organise itself. Rules are a contract between the members and the co-operative.

Copies of Model Rules are available from the Registrar of Co-operatives. There are four Model Rules available:

T	trading co-operative
T	non-trading co-operative issuing shares
T	non-trading co-operative not issuing shares
T	non-trading, government guarantee co-operative

The Rules are available in hard copy and electronic format.

For many co-operatives the Model Rules will meet their purposes with a few necessary additions based on the nature of the proposed co-operative e.g. name, share allocation, objectives, number of directors, quorums, primary activities and active membership provisions. The easiest course of action is to use the model rules as the basis with amendments to suit individual circumstances.

Schedule 1 of the Co-operatives Act 1996 lists those matters for which the Rules must make provisions. There are 26 matters for all co-operatives, nine additional matters for co-operatives with share capital and two for non-trading co-operatives.

Once the Rules have been prepared by the Steering Committee they should be submitted to the Registrar of Co-operatives for approval at least 28 days before the formation meeting - not registration. In doing this, it is also necessary to pay an application fee. You will need to check with the Registrar of Co-operatives to establish the current fee.

Within 28 days of submitting the Rules, the Registrar of Co-operatives will approve the name and rules of the co-operative and any disclosure statement. The Registrar will also provide an application to register form and an approved copy of the rules to present at a formation meeting.

The Rules may be developed by a working party within the Steering Committee. It is important, however, that in presenting its report to the Steering Committee that the working group explain what rules are compulsory, what choices were made about other rules and why and whether or not there were disagreements about these choices.

A Business Plan

While the format of the business plan is similar, the complexity and length of the plan will depend on the co-operative and business activities.

The common elements of any business plan are the following:

- Co-operative overview - an overview of how the elements of the co-operative will come together - including vision, mission and objectives
- Market analysis - the basis of the argument that there is a market including target markets, market penetration and market plan.
- Marketing and sales - including overall strategy, sales activities and communication strategy.
- Products and services - product and service description.
- Risk analysis - analysis of the risks involved in the development of the business.
- Management and ownership - governance structure, board and management.
- Operations - how the co-operative will operate.
- Financial data - income statement, balance sheet and cash flow.

Pre-Formation

Before organizing the formation meeting, the proposed Rules should be submitted to the Registrar of Co-operatives for approval.

In addition, if you have a disclosure statement and a report from an expert such as an accountant or auditor to support the disclosure statement, then, you must seek and provide their written permission to use their report.

Contact the Registrar of Co-operatives for the current guide on preparing disclosure statements.

If the meeting decides to change the rules, you will have to get the changes approved by the Registrar of Co-operatives and then organise another formation meeting.

To avoid this problem you should attempt to minimise the possibility of the meeting changing the rules. This could be achieved in a number of ways. This does not mean that individuals should be discouraged from advocating changes to the Rules or, indeed, a majority voting to change the Rules, if a majority want the Rules to be changed.

Formation Meeting

When the Steering Committee has surveyed members and the market, developed Rules and a Business Plan it is time to organise the public meeting to form the co-operative.

At least five prospective members must be present at the meeting - people who would be eligible to join the proposed co-operative.

You must make sure that you have enough copies of the Rules for everyone who attends the meeting. Of course, copies of the Rules could be distributed before the meeting and/or people could be informed about how to obtain the Rules.

At the formation meeting a chairperson should be elected to run the meeting and a secretary appointed to keep a written record of the meeting.

The meeting should discuss the Rules and any disclosure statement and it is important to make sure that they are clearly understood. Disclosure statements are required for a trading co-operative and submitted to the Registrar for approval 28 days before the formation meeting. In the disclosure statement it will be necessary to cover such things as:

- the proposed trading activities of the co-operative
- membership and shareholding provisions
- information about any contracts with other bodies
- proposed office holders
- formation costs and financial projections for the co-operative's first year of operation
- the principle provisions of the proposed rules

If there are no changes to the Rules, then you move a resolution that the co-operative be formed and the Rules adopted. Two-thirds of the proposed members attending the meeting must vote to adopt the Rules. The next step is to elect a board of directors - the first board of the co-operative.

Members at the formation meeting must complete an application for membership which includes member's full name, street and postal address, number of shares and face value, how much the member paid and signature.

First Board

The formation meeting will appoint the co-operative's first board. The co-operative is managed and controlled by a board of directors elected by the members and subject to the Rules. The board is responsible for the development of guidelines for the control of the co-operative's business activities, approving general business arrangements, ensuring that there is adequate bookkeeping and regular financial statements, ensuring prudent decision-making, ensuring the manager serves the co-operative in accordance with policy determined by members and the board, represents member interests and takes active steps to involve members.

Registration

Once a meeting has decided to form a co-operative and adopt the Rules, the chair and secretary of the formation meeting need to sign two copies of the Rules and if a trading co-operative is being formed a copy of the disclosure statement.

The Application to register form

On this you include:

- Type of co-operative
- Financial year
- Date of approval of Rules
- Registered office address
- Date of formation meeting
- The signatures of two directors and three members

A copy of the Rules approved signed by the chairperson and secretary

The application to register form is available from the Registrar of Co-operatives.

Within two months of the formation meeting the following should be sent to the Registrar of Co-operatives:

- The completed Application to register form
- Two copies of the Rules signed by the chair and secretary of the formation meeting
- A copy of any disclosure statement
- A typed list of the directors' full names, home addresses, occupations, and dates and places of birth
- The application fee - check with the Registrar of Co-operatives for the current fee

The CFV's The Co-operative Start-Up Manual should also be consulted. The cost is \$50 including postage for a print version and \$20 for an electronic version. You can download:

- [a printable summary of The Co-operative Start-Up Manual.](#)
- [a non-printable full copy of The Co-operative Start-Up Manual.](#)

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